IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Criminal Appeal No.401 of 2000.

Date of Decision :14th September, 2007.

State of H.P. …Appellant.

Versus:

Hira Lal and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol,Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent.

Sanajy Karol, J (Oral).

The present appeal arises out of the judgment dated 24th March, 2000 passed by the Additional Chief Judicial Magistrate, Ghumarwin in Criminal Case No. 306/1 of 1997 titled as State of H.P. Vs. Hira Lal and others acquitting the accused persons of the charge for an offence under Sections 325, 323/34 of the Indian Penal Code.

As per the version of the prosecution, on 15th September, 1997 at about 8.30 P.M. at village Chehri, Police Station and Tehsil Ghumarwin, the accused persons caused

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

grievous hurt to Sukhan Devi (PW-3) and simple injury to Sashi Pal (PW-1). An F.I.R. No.104 of 1997 (Ext.PW-1/A) dated 16th September, 1997 was registered with Police Station, Ghumarwin under Sections 325,323/34 I.P.C.. Investigating Officer.Roshan Lal (PW-8) carried out the investigation and after getting the injured medically examined, got M.L.C. reports (Exts. PW-5/A and PW-5/B). Incriminating articles i.e. Danda with which the injury was caused was also taken into possession vide Ext.PW-1/B.

On the completion of the investigation, challen was presented in the court and charges were framed against the accused under Sections 325, 323/34 I.P.C. The accused persons pleaded not guilty and claimed trial.

In order to prove its case, the prosecution has examined eight witnesses, namely, complainant Shashi Pal (PW-1), independent witness Malkiat Singh (PW-2), mother of PW-1 Smt.Sukhan Devi (PW-3), Rikhi Ram (PW-4), Krishanu Ram (PW-6) and Rup Lal (PW-7) who is of formal nature. Dr.P.C.Sharma (PW-5) has medically examined PWs.1 & 3 and Roshan Lal (PW-8) is the Investigating Officer. The statements of the accused persons under Section 313 Cr.P.C. were also recorded

After trial the court below acquitted all the accused persons for the reason that the parties were embroiled in prior litigation and in the absence of independent witnesses namely,

Kaku and Papu, the version of the other independent witness Shri Malkiat Singh (PW-2) could not be relied upon as he had not seen the occurrence of offence. He has deposed that he has not noticed the accused persons inflicting injury on PW-1 and PW-3. In fact according to him there was no injury on the body of PW-1 at all.

Both PWs.1 and 3 have admitted that six cases had been instituted by them against the accused persons before the date of the alleged incident. In this view of the matter, their statements need to be examined and scrutinized with caution. PW-1 has not spelled out as to which of the accused persons had individually participated and inflicted injury on him. Therefore from his statement it cannot be ascertained as to which of the accused persons had committed the offence. He has further stated that when the accused were inflicting injury, two persons, namely, Kaku and Papu who were residing nearby the place of the occurrence of offence rescued the complainant from the clutches of the accused persons. PW-3 has stated that the said two persons Kaku and Papu caught hold of the accused persons and took them to their house. Importantly, these two persons have not been associated at all during the investigation nor they have been produced and examined as witness in the Court. This itself casts doubt on the story of the prosecution. Therefore, from the material on record, it cannot be said that

the guilt of the accused persons is proved beyond reasonable doubt..

The judgment of the court below is based on correct appreciation of facts and material on record. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 14, 2007(R)